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McDERMOTT, WILL & EMERY

November 26, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Ex Parte Presentation; In the Matter of Improving Public Safety
Communications in the 800 MHz Band; WT Docket No. 02-55**

Dear Ms. Dortch:

Delmarva Power & Light Company ("Delmarva") and Atlantic City Electric Company ("Atlantic"), through their undersigned counsel, submit this written *ex parte* presentation to the Federal Communications Commission ("FCC") to clarify the record on an issue that is under consideration in the above-referenced matter. This letter responds to the statements about Delmarva and Atlantic made by sponsors of the so-called Consensus Plan ("Joint Commenters") and Nextel Communications, Inc. ("Nextel") in their separate sets of Further Comments. Specifically, the Further Comments filed by the Joint Commenters and Nextel mischaracterized the substance and intent of Delmarva and Atlantic's prior comments about the costs of rebanding.

Background

On September 17, 2002, the Wireless Telecommunications Bureau released a *Public Notice* in which it requested further comment on various proposals to eliminate interference in the 800 MHz band.¹ The Bureau specifically invited comment on the so-called Consensus Plan, sponsored by Nextel, the Association of Public-Safety Communications Officials-International, and others.

In response to this request for comment, the Joint Commenters and Nextel filed separate sets of Further Comments in support of the rebanding proposal outlined in the Consensus Plan.

¹ Wireless Telecommunications Bureau Clarifies Scope of Comments Sought in 800 MHz Public Safety Proceeding (WT Docket No. 02-55), *Public Notice*, DA 02-2306 (rel. Sept. 17, 2002). While the Bureau eventually requested comment on all plans to eliminate interference in the 800 MHz band, it had initially limited its inquiry to the so-called Consensus Plan. Wireless Telecommunications Bureau Seeks Comment on "Consensus Plan" Filed in the 800 MHz Public Safety Interference Proceeding, *Public Notice*, 17 F.C.C. Rcd. 16755 (2002).

To illustrate the allegedly minimal effect of this 800 MHz realignment proposal on incumbent licensees, Nextel asserted that "a number of utilities that complained in their replies about the supposedly unfair burden of 800 MHz realignment had either not yet reviewed the Consensus Plan or failed to understand it."² Nextel and the Joint Commenters identified Delmarva and Atlantic as two such utilities, stating that these licensees would not "have to relocate to new spectrum or retune a single channel on their systems under the Consensus Plan" because they hold no spectrum in the 806-809/851-854 MHz band.³ Thus, the Joint Commenters recommended that the FCC disregard Delmarva and Atlantic's concerns about their potential relocation costs.

Discussion

As an initial matter, it should be noted that Delmarva and Atlantic's Reply Comments could only discuss the costly and disruptive nature of rebanding in general, and could not address any specific components of the Consensus Plan because it was not on the record prior to the filing deadline for Reply Comments. Despite this inability to address the Consensus Plan directly, Delmarva and Atlantic's statements concerning relocation costs are relevant to all rebanding proposals. Thus, the FCC should not disregard Delmarva and Atlantic's Reply Comments.

Delmarva would also like to correct an apparent oversight by Nextel and the Joint Commenters in their assessment of the impact that the Consensus Plan would have on Delmarva's operations. Although Nextel and the Joint Commenters stated that Delmarva would not have to retune a single channel, an analysis of Delmarva's spectrum holdings indicates that the Consensus Plan would effectively require Delmarva to relocate from its frequencies in the proposed Guard Band, *i.e.*, 814-816/859-861 MHz, or risk unacceptable interference from Nextel.

Nextel has conceded that licensees of wide-area systems in the Guard Band, such as Delmarva, would suffer increased levels of interference under the Consensus Plan. In addition, the Joint Commenters noted that "[i]t may be prudent . . . to relocate mission-critical operations out of the guard band" because of the adjacent cellularized operations in the 816-824/861-869 MHz band.⁴ Licensees in the proposed Guard Band could also find themselves subject to more stringent technical requirements, which the FCC frequently applies to guard bands, and could lose the ability to challenge sources of interference. Because these conditions are unacceptable to critical infrastructure entities such as Delmarva, the adoption of the Consensus Plan would likely force them to vacate their spectrum in the 814-816/859-861 MHz band.

² "Comments of Nextel Communications, Inc.," filed September 23, 2002, at p.6.

³ "Consensus Comments" of the Association of Public-Safety Communications Officials-International, Inc. (APCO), *et al.*, filed September 23, 2002, at p.8; Comments of Nextel at p.7

⁴ "Consensus Comments" at p.6, n.10.

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Nextel and the Joint Commenters have not yet addressed the costs and funding mechanisms for relocating wide-area systems from the Guard Band. Therefore, Delmarva and Atlantic respectfully request the FCC to consider the Reply Comments of Delmarva, Atlantic, and others that describe the substantial relocation costs of incumbent licensees, including those that would effectively be required to relocate from Guard Band under the Consensus Plan.

In accordance with Sections 1.1206 of the FCC's rules, this *ex parte* presentation is being filed electronically with the FCC.

Very truly yours,

[/s/ Shirley S. Fujimoto](#)

Shirley S. Fujimoto
Counsel to Delmarva Power & Light Company
and Atlantic City Electric Company